

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

APR 28 2015

JAMES W. HARRIS, CLERK  
By: Meghan DEP. CLERK

MATTHEW NUNN

Plaintiff,

-against-

GEMINI CAPITAL GROUP, LLC  
A New York Corporation

Defendant.

Civil Action No. 4:15CV245-KGB

**JURY TRIAL DEMANDED**

This case assigned to District Judge Baker  
and to Magistrate Judge Heathley

**ORIGINAL COMPLAINT**

Plaintiff, Matthew Nunn (Nunn), by his undersigned counsel brings this action against Gemini Capital Group, LLC (Gemini), and states:

**STATEMENT OF JURISDICTION AND VENUE**

1. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1331, 15 U.S.C. §1692k(d) and 28 U.S.C. §1367 for pendant State law claims.
2. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., violations of the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-107(a)(10) and tort claims for invasion of privacy.
3. The acts and events complained of in this Complaint occurred within Saline County, Arkansas.

4. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because the events giving rise to the claims occurred here, Plaintiff resides here, and Defendant transacts business here.

**PARTIES TO THE CLAIM**

5. The averments set forth in paragraphs 1-4 are adopted herein and incorporated as if set forth word for word.

6. Nunn is a resident of Alexander, Saline County, Arkansas, and is a “consumer” as defined by 15 U.S.C. §1692a(3), and/or “any person” as defined by 15 U.S.C. §1692d;

7. At the time of the incident described further herein, Gemini was a corporation duly authorized to conduct business in the State of Arkansas as a “debt collector,” as that term is defined by 15 U.S.C. §1692a(6) and is registered and licensed with the Arkansas State Board of Collection Agencies, and attempting to collect a “debt,” as defined in 15 U.S.C. §1692a(5).

8. Gemini does not have a registered agent for service of process in Arkansas and is being served via the Secretary of State at its principal place of business pursuant to Ark. Code Ann. §17-24-403:

180 S. Broadway  
Suite 406  
White Plains, NY 40605

**FACTUAL BACKGROUND**

9. The averments set forth in paragraphs 1-8 are adopted herein and incorporated as if set forth word for word.

10. Gemini filed a lawsuit against Nunn in the District Court of Saline County, Arkansas on September 24, 2014 alleging a consumer debt.

11. The lawsuit and attached exhibits allege Nunn defaulted on an automobile loan with

the original creditor, Santander Consumer USA, Inc. A copy of that suit is attached hereto as “**Exhibit 1**” and incorporated as if set forth word for word.

12. Gemini asserted it purchased and was assigned the account.

13. Upon information and belief, the automobile in question was repossessed and sold in 2008.

14. No payments have been made on the account by Nunn since the automobile was repossessed and sold in 2008.

15. Ark. Code Ann. §16-56-111 provides for a five year statute of limitations for bringing suit on an instrument in writing.

16. The lawsuit filed by Gemini against Nunn was filed on September 24, 2014 which is beyond the applicable five year statute of limitations.

17. By filing a lawsuit that is barred by the applicable statute of limitations, Gemini is making a false representation of the character, amount, or legal status of the debt in violation of **15 U.S.C. §1692e(2)(A)**.

18. By filing a lawsuit that is barred by the applicable statute of limitations, Gemini is engaging in unfair or unconscionable means in its attempt to collect the alleged debt in violation of **15 U.S.C. §1692f**.

19. By filing a lawsuit that is barred by the applicable statute of limitations, Gemini is in violation of **15 U.S.C. §1692e(5)** by taking action it could not legally take.

20. Gemini’s conduct violates the FDCPA for which strict liability applies pursuant to **15 U.S.C. §1692**, et seq.

21. Gemini’s conduct violates the FDCPA for which statutory damages apply pursuant to **15 U.S.C. §1692k(a)(2)(A)**.

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

22. The averments set forth in paragraphs 1-21 are adopted herein and incorporated as if set forth word for word.

23. Gemini is in violation of the following sections of the Fair Debt Collection Practices Act as alleged above:

a. 15 U.S.C. §1692e(2)(A): Making a false representation of the character, amount, or legal status of any debt;

b. 15 U.S.C. §1692e(5): Taking action that cannot legally be taken or that is not intended to be taken;

c. 15 U.S.C. §1692f: Using unfair or unconscionable means to collect or attempt to collect any debt;

**VIOLATION OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

24. The averments contained in paragraphs 1-23 are hereby incorporated as if set forth word for word.

25. By filing a lawsuit outside the statute of limitations, Gemini was engaged in false and deceptive acts pursuant to Ark. Code Ann. **§4-88-107(a)(10)**.

**INVASION OF PRIVACY BY INTRUSION UPON SECLUSION**

26. The averments contained in paragraphs 1-25 are hereby incorporated as if set forth word for word.

27. Gemini intentionally intruded physically or otherwise upon Nunn's solitude or seclusion and believed or was substantially certain that it lacked the necessary legal authority or personal permission, invitation or valid consent to commit the intrusive act.

28. Gemini's intrusion was of a kind that would be highly offensive to a reasonable person as the result of conduct to which a reasonable person would strongly object.

29. Nunn conducted himself in a manner consistent with an actual expectation of privacy.

30. Gemini's intrusion was a proximate cause of Nunn's damages.

### **DAMAGES**

31. The averments set forth in paragraphs 1-30 are adopted herein and incorporated as if set forth word for word.

32. As a direct and proximate result of the occurrence made the basis of this lawsuit, Nunn is entitled to the following damages:

- a. actual costs, expenses and attorney fees pursuant to 15 U.S.C §1692(k)(a)(3);
- b. statutory damages in the maximum amount of: \$1,000.00 pursuant to 15 U.S.C. §1692(k)(a)(2)(A).
- c. actual damages pursuant to 15 U.S.C. §1692k(a)(1) for mental anguish, stress and humiliation.
- d. actual damages and attorney fees pursuant to Ark. Code Ann. §4-88-113(f).
- e. actual damages to be proven at trial for invasion of privacy.

### **DEMAND FOR JURY TRIAL**

33. The averments set forth in paragraphs 1-32 are adopted herein and incorporated as if set forth word for word.

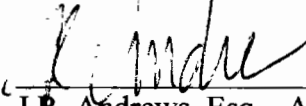
34. Nunn demands a jury trial on all issues so triable.

### **PRAYER**

WHEREFORE, Nunn prays that:

1. He be granted statutory damages pursuant to the 15 U.S.C. §1692k(a)(2)(A);
2. He be granted actual damages pursuant to the 15 U.S.C. §1692k(a)(1);
3. He be granted costs and attorney fees pursuant to 15 U.S.C. §1692k(a)(3).
4. He be granted actual damages and attorney fees pursuant to Ark. Code Ann. §4-88-113(f).
5. He be granted damages as a result of invasion of privacy.

Respectfully submitted,



J.R. Andrews, Esq. ABN 92041

**ANDREWS LAW FIRM**

2014 Martha Drive

Little Rock, Arkansas 72212

Telephone: (501) 680-3634

jrandrewsatty@yahoo.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF SALINE COUNTY, ARKANSAS  
BENTON DIVISION**

**GEMINI CAPITAL GROUP, LLC**

**V.**

**CASE NO.**

*CV-14-1213*

**MATTHEW NUNN & LAURA NUNN**

FILED ON TUES

2014 SEP 24 PM 1:56

DISTRICT COURT  
SALINE COUNTY  
AR  
DEFENDANT

**COMPLAINT**

Comes now Plaintiff, by and through counsel, and for its cause of action over and against Defendant, alleges and states:

1. That the Plaintiff is a financial institution authorized to do business in the state of Arkansas, and is the successor in interest to SANTANDER CONSUMER USA, INC..
2. That the Defendant is a resident of Saline County, Arkansas, and jurisdiction and venue are proper in this Court.
3. That Defendant executed a Vehicle Retail Installment Contract ("Agreement"). A copy of said Agreement is attached hereto and incorporated herein by reference as if set out word for word. Please see attached, Exhibit "A".
4. That the contract was subsequently sold, transferred and assigned to Plaintiff.
5. That Defendant defaulted on the Agreement by failing to make installment payments when due, resulting in the repossession of said vehicle. The vehicle was subsequently sold.
6. That as a direct and proximate result of Defendant's breach of the agreement, Plaintiff has suffered damages in the amount of \$4,960.86, as evidenced by the Affidavit of Account which is attached hereto.
7. That demand has been made for the payment of same, yet the balance remains unpaid.

WHEREFORE, Plaintiff prays for Judgment against Defendant in the amount of \$4,960.86, for all costs herein paid and expended, for pre-judgment and post-judgment interest, reasonable attorneys' fees, and for all other proper relief.

Allen & Withrow  
Attorneys at Law  
P.O. Box 17248  
Little Rock, AR 72222  
(501) 227-2000

*Teaven Stamatis*  
Teaven Stamatis (2008064)

STATE OF NEW YORK     )  
  ) ss.  
COUTNY OF NEW YORK    )

**AFFIDAVIT OF ACCOUNT**

Before me, the undersigned authority, personally appeared **Roger Neustadt**, who, being by me duly sworn, deposes as follows:

1.     **My full name is Roger Neustadt.**
2.     **As a/an CEO, I am an authorized agent of Gemini Capital Group, LLC, and I or a person under my supervision has care, custody, and control of the records concerning the account of Matthew Nunn and Laura Nunn, the Defendant. I am familiar with the books and records of Gemini Capital Group, LLC and with the Defendant's account.**
3.     **I hereby aver that this claim is true and correct to the best of my knowledge, information and belief, and is due by the Defendant to the Plaintiff and that all just and lawful offsets, payments and credits to this account have been allowed.**
4.     **These records show that a total balance of \$4,960.86, including interest accrued at the rate of 0%, after charge off unless and until pre-judgment or post judgment interest is awarded by the court, in accordance with the terms and conditions of the agreement, is due and payable by Defendant to Plaintiff, the assignee of SANTANDER CONSUMER USA, INC., the original owner of the account.**

Further Affiant sayeth not.



AFFIANT - Roger Neustadt

SUBSCRIBED AND SWORN to before me this

5 day of Dec, 2013.

Notary Public:



My Commission Expires:

RYAN FEALEY  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01FE6079472  
Qualified in Nassau County  
My Commission Expires August 20, 2017



[illegible]

**1. VEHICLE DESCRIPTION**  
 (a) Year 1986 (b) Make BMW (c) Model 724i  
 (d) VIN 2006 121 10121

**2. PRIMARY INSURANCE USER**  
☐ Personal ☐ Business or Commercial ☐ Agricultural ☐

If no box indicated, or if Personal box is checked, you agree to pay the vehicle for personal, family, or household purposes.

**3. TERM OF DESCRIPTION**  
**LONG NONRESIDENTIAL RESIDENTIAL**

**4. ITEMIZATION OF AMOUNTS PROVIDED**

a. Cash Price  
 (1) Vehicle including accessories, delivery, installation charges, if any, \$ 22502.00  
 (2) Sales Tax \$ 0.00  
 (3) \$ 0.00 \$ 0.00  
 (4) Cash \$ 22502.00

b. Financing  
 (1) Cash Disbursement \$ 2500.00  
 (2) Manufacturer's Rebate \$ 2000.00  
 (3) Cash Advances on Installments \$ 1500.00  
 (4) Payment on Installment \$ 0.00  
 (5) Total Amount on Installment \$ 1500.00  
 (6) Downpayment \$ 0.00  
 (7) Total Amount on Installment less cash advance on first payment \$ 0.00

c. Unpaid Balance of Cash Price \$ 15500.00  
 (1) Unpaid Installment Amount to be Financed \$ 0.00  
 Paid to \$ 0.00

d. Other Charges including Amounts Paid to Others on Your Behalf  
 (1) Paid to Public Utilities for  
 (a) Other Charges Included in Cash Price \$ 0.00  
 (b) Filing Fees \$ 1.00  
 (c) License Fees \$ 0.00  
 (d) Certificate of Title Fees \$ 0.00  
 (e) Registration Fees \$ 0.00  
 (2) Other Charges  
 (a) Other Vehicle Inspection Fee \$ 0.00  
 Paid to \$ 0.00  
 (b) Dealer Inventory Fee \$ 0.00  
 Paid to \$ 0.00  
 (c) Dealer Fee \$ 0.00  
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**5. FINANCIAL INFORMATION**  
 (a) Cash Price \$ 22502.00  
 (b) Sales Tax \$ 0.00  
 (c) \$ 0.00 \$ 0.00  
 (d) Cash \$ 22502.00

**6. FINANCING**  
 (1) Cash Disbursement \$ 2500.00  
 (2) Manufacturer's Rebate \$ 2000.00  
 (3) Cash Advances on Installments \$ 1500.00  
 (4) Payment on Installment \$ 0.00  
 (5) Total Amount on Installment \$ 1500.00  
 (6) Downpayment \$ 0.00  
 (7) Total Amount on Installment less cash advance on first payment \$ 0.00

**7. UNPAID BALANCE OF CASH PRICE**  
 (1) Unpaid Installment Amount to be Financed \$ 0.00  
 Paid to \$ 0.00

**8. OTHER CHARGES**  
 (1) Paid to Public Utilities for  
 (a) Other Charges Included in Cash Price \$ 0.00  
 (b) Filing Fees \$ 1.00  
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**9. FINANCIAL INFORMATION**  
 (a) Cash Price \$ 22502.00  
 (b) Sales Tax \$ 0.00  
 (c) \$ 0.00 \$ 0.00  
 (d) Cash \$ 22502.00

**10. FINANCING**  
 (1) Cash Disbursement \$ 2500.00  
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 (7) Total Amount on Installment less cash advance on first payment \$ 0.00

**11. UNPAID BALANCE OF CASH PRICE**  
 (1) Unpaid Installment Amount to be Financed \$ 0.00  
 Paid to \$ 0.00

**12. OTHER CHARGES**  
 (1) Paid to Public Utilities for  
 (a) Other Charges Included in Cash Price \$ 0.00  
 (b) Filing Fees \$ 1.00  
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 Paid to \$

*"Only apply to matching portion of these amounts."* Address

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**NOTICE**

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS THEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE SELLER HEREUNDER. THIS NOTICE APPLIES ONLY IF THE GOODS AND SERVICES OBTAINED UNDER THIS CONTRACT WERE OBTAINED PURSUANT TO PERSONAL, FAMILY OR HOUSEHOLD USE.

To contact Chrysler Financial about this account call **800-877-5768**. This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2001 N. Lamar Blvd., Austin, Texas 78705-4389, (512) 534-7000 and (800) 628-5276 and can be contacted relative to any lawsuit or complaint.

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION.  
THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE ARE A PART OF THIS CONTRACT.

**2. PAYMENT.** You agree to make all payments when they are due, according to a schedule set forth in the Finance Charge, and to pay the full amount of any late charges or penalties assessed against you for failure to do so. You agree to pay the full amount of any late charges or penalties assessed against you for failure to do so. You agree to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**3. LATE CHARGES/RETURNED CHECKS.** You will pay a late charge on payments or payments of interest, when they are due, of up to 15% of the amount of the payment or interest due. You agree to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**4. SECURITY INTEREST.** You give as a security interest in the vehicle and any accessories, equipment, and replacement parts on the vehicle, all of the rights and interests you have in the vehicle, and all of the rights and interests you have in the vehicle, and all of the rights and interests you have in the vehicle.

**5. VEHICLE TREATMENT.** You agree to maintain the vehicle in good condition, and to keep the vehicle clean and free of damage. You agree to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**6. REQUIRED PHYSICAL DAMAGE INSURANCE.** You agree to maintain physical damage insurance on the vehicle, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**7. DEFAULT.** You will be in default of this agreement if you fail to make any payment when it is due, or if you fail to comply with any other term of this agreement. You agree to pay the full amount of any late charges or penalties assessed against you for failure to do so.

You agree to be liable for the entire amount of the debt, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

By signing this agreement, you agree to pay the full amount of the debt, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

If you are not the owner of the vehicle, you agree to sign this agreement on behalf of the owner, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**8. BALLOON PAYMENT CONTRACT.** This agreement is a balloon payment contract, and you agree to pay the full amount of any late charges or penalties assessed against you for failure to do so.

You agree to pay the full amount of the debt, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

When the first payment is due, you agree to pay the full amount of the debt, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**NOTICE: THE INFORMATION YOU SEE ON THE WINDOW CONTRACT, INFORMATION ON THE WINDOW FORM OR THE CONTRACT OF SALE.**

The preceding NOTICE applies if the vehicle is a used vehicle, and if the vehicle is a used vehicle, and if the vehicle is a used vehicle.

**COMPARISON OF INFORMATION YOU SHOULD KNOW.**

Information you should know about the vehicle, and about the vehicle, and about the vehicle.

**COMPARISON OF INFORMATION YOU SHOULD KNOW.**

Information you should know about the vehicle, and about the vehicle, and about the vehicle.

**NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION.**

**9. NO MAINE CONTRACT.** This agreement is not a Maine contract, and you agree to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**10. PAYMENT OF FIRST PAYMENT.** You agree to pay the full amount of the first payment, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**11. PAYMENT OF FIRST PAYMENT.** You agree to pay the full amount of the first payment, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

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**16. PAYMENT OF FIRST PAYMENT.** You agree to pay the full amount of the first payment, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

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**21. PAYMENT OF FIRST PAYMENT.** You agree to pay the full amount of the first payment, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**22. PAYMENT OF FIRST PAYMENT.** You agree to pay the full amount of the first payment, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.

**23. PAYMENT OF FIRST PAYMENT.** You agree to pay the full amount of the first payment, and to pay the full amount of any late charges or penalties assessed against you for failure to do so.